

EX PARTE OR LATE FILED

93-253/

**D.J. Miller & Associates**

February 28, 1994

DOCKET FILE COPY ORIGINAL

By FAX and U. S. Mail

Mr. Langston Walker  
President  
Valley Management, Inc.  
Suite 210  
Krystal Building  
100 West M. L. King Boulevard  
Chattanooga, Tennessee 37402

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Dear Mr. Walker:

In responding to your letter of February 25 to Dave Miller, he asked me to pull together some data to send to you that might provide support for your position with the Federal Communications Commission. The enclosed data tables, compiled from the 1987 Survey of Minority Business Enterprise, provides a snapshot comparative view of minority businesses nationwide at three levels of detail: (a) all industries; (b) Transportation, Communications & Public Utilities—the industrial sector containing the Communications industry group; and (c) the Communications industry group (SIC 48) itself.

Due to the limited time available, comparable data for women owned enterprises was not collected. Tables 1 through 18 provide straightforward data for each minority group on the following:

1. numbers of firms
2. numbers of firms with paid employees
3. sales and receipts
4. numbers of employees and size of payroll
5. percentage changes in these measures between 1982 and 1987.

Tables A, B and C, respectively, provide measures of relative availabilities of minority owned firms, percentages of sales/receipts accrued by minority firms, and a measure of "disparity" between the percentage availability and percentage utilization.

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Mr. Langston Walker  
February 28, 1994  
Page 2

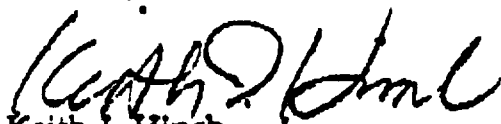
Availability is defined as the percentage of firms in an industry that are minority. Utilization is defined as the percentage of sales/receipts in an industry that accrue to minority firms.

Table C, in particular, presents a measure used by D. J. Miller & Associates, Inc. (DJMA) to portray differences between the availability and market utilization of minority firms compared to majority owned firms. While the data used here is very aggregated, it does show substantial disparity experienced by firms owned by Blacks, Hispanics and Other Minorities. A disparity ratio of 1.0 indicates "parity" between availability and utilization. In other words, minority firms are getting a share of receipts equal in proportion to their percentage presence in the industry group. A ratio exceeding one, on the other hand, indicates underutilization of minority firms. A ratio less than one indicates that minority firms had sales/receipts exceeding, in percentage terms, their availability in the market.

The disparity ratios are calculated as the percentage availability (Table A) divided by the corresponding percentage utilization (Table B). Thus, for Black firms with paid employees, for instance, the percentage availability of 1.6 percent, divided by the percentage utilization of 0.8 percent, results in a disparity ratio of 2.0—indicating substantial underutilization. Thus, Black firms in the Communications industry group had a percentage availability that was twice their actual market utilization (as measured by percentage of industry receipts accruing to Black firms). Please note also that substantial disparity is indicated for all three categories of minority enterprises in SIC 48.

I hope that this data is useful to you in your dealings with the FCC. Please write or call if you have questions. It was a pleasure to respond to your request.

Sincerely,



Keith I. Hinch  
D. J. Miller & Associates, Inc.

Attachment

**Table A**  
**Comparative MBE Availability**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1987**

Category	All Firms		Firms with Employees	
	#	%	#	%
All Industries	32,536	100.0	7,524	100.0
Black	896	2.8	119	1.6
Hispanic	756	2.3	115	1.5
Other	421	1.3	42	0.6

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

Availability = Percentage of firms in an industry that are minority.

**Table B**  
**Comparative MBE Receipts**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1987**  
**(millions of dollars)**

Category	All Firms		Firms with Employees	
	\$	%	\$	%
All Industries	9,918	100.0	9,196	100.0
Black	81.8	0.8	72.0	0.8
Hispanic	38.9	0.4	28.9	0.3
Other	33.0	0.3	27.6	0.3

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

Utilization = Percentage of sales/receipts accruing to minority firms in an industry.

**Table C**  
**Market Disparity Ratios**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1987**

Category	All Firms	Firms with Employees
Black	3.5	2.0
Hispanic	5.8	6.0
Other	4.3	2.0

Source: Calculations by DJMA from data in Tables A and B

Disparity Ratio = percentage availability divided by percentage utilization.

**Table 1**  
**Number of Black Owned Firms**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Firms		% Change
	1982	1987	
All Industries	308,260	424,165	37.60
Transportation and Public Utilities	23,907	36,958	54.59
Communication s (SIC 48)	NA	896	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 2**  
**Number of Black Owned Firms with Employees**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Firms		% Change
	1982	1987	
All Industries	37,841	70,815	87.14
Transportation and Public Utilities	2,215	4,987	125.15
Communication s (SIC 48)	37	118	218.92

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 3**  
**Number of Hispanic Owned Firms**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Firms		% Change
	1982	1987	
All Industries	233,973	422,373	80.52
Transportation and Public Utilities	12,957	28,955	108.03
Communication s (SIC 48)	82	756	821.95

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 4**  
**Number of Hispanic Owned Firms with Employees**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Firms		% Change
	1982	1987	
All Industries	39,272	82,908	111.11
Transportation and Public Utilities	1,340	3,989	197.69
Communication s (SIC 48)	17	115	576.47

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 5**  
**Number of Firms Owned by Native Americans,**  
**and Asian and Pacific Islanders**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Firms		% Change
	1982	1987	
All Industries	201,264	376,711	87.17
Transportation and Public Utilities	4,826	12,857	166.41
Communication s (SIC 48)	60	421	601.67

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 6**  
**Number of Firms with Employees**  
**Owned by Native Americans,**  
**and Asian and Pacific Islanders**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Firms		% Change
	1982	1987	
All Industries	43,323	98,457	122.65
Transportation and Public Utilities	488	1,315	169.47
Communication s (SIC 48)	7	42	500.00

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 7**  
**Sales of Black Owned Firms**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Sales and Receipts (\$1,000)		% Change
	1982	1987	
All Industries	\$9,619,066	\$19,762,676	105.46
Transportation and Public Utilities	\$733,232	\$1,573,342	114.58
Communication s (SIC 48)	\$21,272	\$81,785	284.47

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 8**  
**Sales of Black Owned Firms with Employees**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Sales and Receipts (\$1,000)		% Change
	1982	1987	
All Industries	\$5,704,545	\$14,130,420	147.70
Transportation and Public Utilities	\$262,764	\$786,091	199.16
Communication s (SIC 48)	\$20,243	\$71,953	255.45

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises



**Table 9**  
**Sales of Hispanic Owned Firms**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Sales and Receipts (\$1,000)		% Change
	1982	1987	
All Industries	\$11,759,133	\$24,731,600	110.32
Transportation and Public Utilities	\$566,877	\$1,380,981	143.61
Communication s (SIC 48)	NA	\$38,652	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 10**  
**Sales of Hispanic Owned Firms with Employees**  
**In Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Sales and Receipts (\$1,000)		% Change
	1982	1987	
All Industries	\$7,438,664	\$17,729,432	138.44
Transportation and Public Utilities	\$259,048	\$725,484	180.06
Communication s (SIC 48)	NA	\$28,651	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 11**  
**Sales of Firms Owned by Native Americans,**  
**and Asian and Pacific Islanders**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Sales and Receipts (\$1,000)		% Change
	1982	1987	
All Industries	\$13,148,316	\$34,036,605	158.86
Transportation and Public Utilities	\$220,317	\$735,766	233.96
Communication s (SIC 48)	\$4,514	\$33,037	631.86

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 12**  
**Sales of Firms with Employees**  
**Owned by Native Americans,**  
**and Asian and Pacific Islanders**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Sales and Receipts (\$1,000)		% Change
	1982	1987	
All Industries	\$8,900,741	\$25,104,127	182.05
Transportation and Public Utilities	\$120,459	\$455,617	278.23
Communication s (SIC 48)	NA	\$27,561	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority  
Owned Business Enterprises

**Table 13**  
**Number of Employees in Black Owned Firms with Employees**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Employees		% Change
	1982	1987	
All Industries	121,373	220,467	81.64
Transportation and Public Utilities	5,760	9,910	72.05
Communications (SIC 48)	534	1,334	149.81

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 14**  
**Number of Employees in Hispanic Owned Firms with Employees**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Employees		% Change
	1982	1987	
All Industries	154,791	264,846	71.10
Transportation and Public Utilities	4,560	8,006	75.57
Communications (SIC 48)	NA	533	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 15**  
**Number of Employees in Firms with Employees**  
**Owned by Native Americans,**  
**and Asian and Pacific Islanders**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Number of Employees		% Change
	1982	1987	
All Industries	174,179	360,301	106.86
Transportation and Public Utilities	1,420	3,030	113.38
Communications (SIC 48)	NA	171	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 16**  
**Annual Payroll of Black Owned Firms with Employees**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Annual Payroll (\$1,000)		% Change
	1982	1987	
All Industries	\$948,108	\$2,781,105	191.22
Transportation and Public Utilities	60,536	153,959	154.32
Communications (SIC 48)	7,343	20,779	182.95

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 17**  
**Annual Payroll of Hispanic Owned Firms with Employees**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

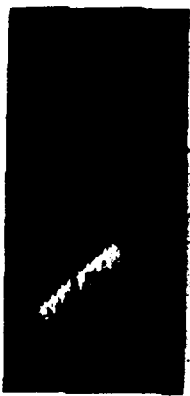
Industry Division/Major Group/Industry Group	Annual Payroll (\$1,000)		% Change
	1982	1987	
All Industries	\$1,239,933	\$3,243,342	161.57
Transportation and Public Utilities	\$52,172	\$135,592	159.89
Communication s (SIC 48)	NA	\$10,451	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises

**Table 18**  
**Annual Payroll of Firms with Employees**  
**Owned by Native Americans,**  
**and Asian and Pacific Islanders**  
**in Communications Major Industry Group**  
**(SIC 48)**  
**1982 and 1987**

Industry Division/Major Group/Industry Group	Annual Payroll (\$1,000)		% Change
	1982	1987	
All Industries	\$1,264,653	\$3,611,188	185.55
Transportation and Public Utilities	\$18,011	\$49,774	176.35
Communication s (SIC 48)	NA	\$6,516	NA

Source: U. S. Dept. of Commerce, Bureau of the Census, 1987 Survey of Minority Owned Business Enterprises



**Alliance TelCom, Inc.**

75-9 Liberty Avenue

Jersey City, New Jersey 07306

201-659-6485

Telecommunications Services  
Call Processing Solutions  
Data Base and Network Services

February 28, 1994

**EX PARTE**

**RE: Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP. Docket No. 93-253.**

Submitted by: William D. Jimerson, Alliance Telcom, Inc.  
Acting Director of the National Minority PCS Association  
Managing Director- Alliance Telcom, Inc.  
65 Sullivan St. Suite 63  
Rochester, NY 14605  
(716)325-5250

Mr. Robert Pepper  
Chief Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Mr. Pepper:

I am writing you in response to concerns that Alliance Telcom, Inc. and other members of the National Minority PCS Association (NMPA) have regarding the fate of the minority component of the allocation process for PCS spectrum. The intent of this filing is to assist the Commission in identifying legislative, judicial, and general research that documents historical barriers to entry for minority owned and operated companies in the telecommunications industry. The response herein was prepared by Alliance Telcom, Inc. and incorporates the views of the National Minority PCS Association and are respectfully submitted for your review.

Though a number of our and other respondent filings on record at the Commission and elsewhere document such material, we felt that it would be prudent to offer further assistance to you and the Commission in building substantial record documenting clear evidence of capital formation barriers experienced by minority entities. It is my hope that such documentation will clearly dictate the necessity of financial and structural incentives specifically and exclusively for minority companies in the PCS auction process. As there is significant record that recommend the type of incentives necessary, I will not spend any time focusing on this issue, but instead will focus on the scope of said incentives<sup>1</sup>

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<sup>1</sup>See filings of Alliance Telcom, Inc. "Reply to Comments for PP. Docket 93-253." See filings of the National Minority PCS Association "Reply to Comments for PP. Docket 93-253" filed November 1993.

Mr. Robert Pepper  
February 28, 1994  
Page - 2

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Telecommunications Services  
Call Processing Solutions  
Data Base and Network Services

Almost every area covered by the FCC's BTA and MTA areas have performed in depth analysis that documents the historical discrimination of minority business in every industry from construction to telecommunications. The evidence presented in those studies, some which are cited and included in this filing, demonstrate economic disparities that directly result in capital formation barriers for minority entities. Thus, due to the capital intensity of the telecommunications industry, many minority firms have been regulated to being subcontractors or, in many cases, simple resellers of larger entities products and services.

When considering the validity of having additional incentives for minority owned entities above and beyond the incentives for women-owned entities, the Commission should consider that though there is substantial evidence of discrimination against women-owned firms, the discrimination against white-female owned entities is not as severe as against minority female-owned entities. As documented by the Minority Business Legal Defense and Education Fund's report to the U.S. Congress "Telecommunications Industry MWBE Survey Summary of Findings" there is compelling evidence that even the current minority companies within the telecommunications industry have been denied access to capital.<sup>2</sup>

"Based on the results of our study we believe there is compelling evidence that telecommunications companies continue to use their dominate market position to limit the competitive access and development of minority-owned companies in subcontracting, procurement of products and equipment, technology transfer, technical training, and meaningful development assistance."

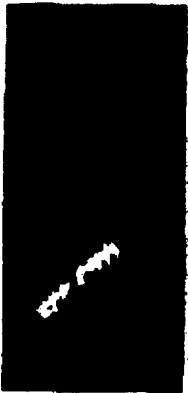
Further research documented in The Report of the New York Telecommunications Exchange submitted to Governor Mario M. Cuomo, identifies historical exclusion of minority operators in the wireline telephone service industry<sup>3</sup>. Moreover, the report calls for direct initiatives on the state level to promote minority owned firms providing telecommunications services greater access to capital and the formation of partnerships with larger firms.

In addition to the specific research projects that have been conducted in this area, the judicial system has repeatedly found that preferences designed for enhancing minority participation in the telecommunications industry are constitutionally legitimate. The decision in the case of West Michigan, 236 U.S. App. D.C. 335, 735 F.2d 601 clearly supports this fact. In considering the policy of the FCC awarding broadcast licenses to minority firms based on additional criteria derived from minority enhancements the court ruled that "the FCC's plan easily passes constitutional muster," for at least two reasons: First, the Commission's award of minority enhancements is not a grant of any given permits to minorities or denial to qualified

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<sup>2</sup>See "Reply Comments to PP.Docket 93-253 Minority Business Enterprise Legal and Defense Education Fund Inc."

<sup>3</sup>See attached document performed in conjunction with the New York State Office of Economic Development and the Department of Public Service.



*Alliance TelCom, Inc.*

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Telecommunications Services  
Call Processing Solutions  
Data Base and Network Services

Mr. Robert Pepper  
February 28, 1994  
Page - 3

non-minorities but instead a consideration for minority entities which is but one of many factors in a competitive bidding process. Secondly, as is the case of the PCS mandate, the Commission's action in this case comes on the directive from congress that showed clear recognition of the under-representation of minorities in the telecommunications industry<sup>4</sup>. The very basis for congress issuing the mandate was based on past inequities stemming from racial and ethnic discrimination. See also the Metro Broadcasting, Inc. v. FCC, 497 U.S. 547(attached)<sup>5</sup>.

The examination of our research revealed considerable discrimination of minority owned telecommunications companies in the provisioning of telecommunications products and services. I hope that this information proves to be helpful in your rule making process.

Sincerely,

William D. Jimerson  
Managing Director

WDJ/kph

enclosures: Metro Broadcasting, Inc. v. FCC, 497 U.S. 547  
The Report of the New York Telecommunications Exchange

cc: William Cantea  
Acting Secretary of the FCC

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<sup>4</sup>In the case of PCS policy regarding minority ownership see Omnibus Budget Reconciliation Act of 1993, Section 309(j) to the Communication Act of 1934.

<sup>5</sup>See also Fullilove v. Klutnick, 448 U.S. 449 (1980).